

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

PCT

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION

See paragraph 2 below

International application No.
PCT/US2004/008176

International filing date (day/month/year)
17.03.2004

Priority date (day/month/year)
17.03.2003

International Patent Classification (IPC) or both national classification and IPC
A61F2/24

Applicant
CASE, Brian, D

ENTERED
9-23-05

1. This opinion contains indications relating to the following items:

- Box No. I Basis of the opinion
- Box No. II Priority
- Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- Box No. IV Lack of unity of invention
- Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- Box No. VI Certain documents cited
- Box No. VII Certain defects in the international application
- Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



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10/549437

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US2004/008176

JC20 Rec'd PCT/PTO 1 6 SEP 2005

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - a sequence listing
 - table(s) related to the sequence listing
 - b. format of material:
 - in written format
 - in computer readable form
 - c. time of filing/furnishing:
 - contained in the international application as filed.
 - filed together with the international application in computer readable form.
 - furnished subsequently to this Authority for the purposes of search.
3. In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

the entire international application,
 claims Nos. 21-28

because:

the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (*specify*):
 the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
 the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
 no international search report has been established for the whole application or for said claims Nos. 21-28
 the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
the written form has not been furnished
 does not comply with the standard
the computer readable form has not been furnished
 does not comply with the standard
 the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.
 See separate sheet for further details

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US2004/008176

**Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or
industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes:	Claims	1-20,29,30
	No:	Claims	
Inventive step (IS)	Yes:	Claims	1-20,29,30
	No:	Claims	
Industrial applicability (IA)	Yes:	Claims	1-20,29,30
	No:	Claims	

2. Citations and explanations

see separate sheet

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)**

International application No.
PCT/US2004/008176

Re Item III.

Rule 39.1(iv) PCT - Method for treatment of the human or animal body by surgery

Re Item V.

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

Reference is made to the following document:

D1 : EP 0 856 300 A (VENPRO CORPORATION) 5 August 1998 (1998-08-05)

Document D1, which is considered to represent the most relevant state of the art, discloses "A vascular valve device, comprising: an artificial valve for deployment within a vascular passage, the artificial valve including flexible material and at least one frame element.

From this, the subject-matter of independent claim 1 differs in that: the said frame element is adapted for removal after deployment of said artificial valve in the vessel.

The subject-matter of claim 1 is therefore novel (Article 33(2) PCT)

The problem to be solved by the present invention may be regarded as: to permit the transluminal implantation of an artificial valve whilst leaving a totally flexible valve in place.

The solution to this problem proposed in claim 1 of the present application is considered as involving an inventive step (Article 33(3) PCT) since the features of claim 1 cannot be derived from the available prior art.

Claims 2-20 are dependent on claim 1 and as such also meet the requirements of the PCT with respect to novelty and inventive step.

The same reasoning applies mutatis mutandis to independent claims 29 and 30 which also meet the

requirements of the PCT with respect to novelty and inventive step:

Re Item VII.

Certain defects in the international application

Independent claims 1, 29 and 30 are not in the two-part form in accordance with Rule 6.3(b) PCT, which in the present case would be appropriate, with those features known in combination from the prior art (document D1) being placed in the preamble (Rule 6.3(b)(I) PCT) and with the remaining features being included in the characterising part (Rule 6.3(b)(ii) PCT).

The features of the claim/s are not provided with reference signs placed in parentheses (Rule 6.2(b) PCT).

Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in the document D1 is not mentioned in the description, nor is this document identified therein.

Re Item VIII.

Certain observations on the international application

Although claims 1, 29 and 39 have been drafted as separate independent claims, they appear to relate effectively to the same subject-matter and to differ from each other only with regard to the definition of the subject-matter for which protection is sought and in respect of the terminology used for the features of that subject-matter. The aforementioned claims therefore lack conciseness and as such do not meet the requirements of Article 6 PCT.